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Title 35 Fiduciaries And Trust Estates
Chapter 16 Tennessee Investment Services Act of 2007

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Tenn. Code Ann. § 35-16-101 (2012)

35-16-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Investment Services Act of 2007."

HISTORY: Acts 2007, ch. 144, § 1.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Section to Section References.

This chapter is referred to in § 35-15-505.

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Tenn. Code Ann. § 35-16-102 (2012)

35-16-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;
- (2) "Creditor" means, with respect to a transferor, a person who has a claim;
- (3) "Debt" means liability on a claim;
- (4) "Disposition" means a transfer, conveyance or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one (1) or more new trustees. "Disposition" also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition;
- (5) "Investment advisor" means a person given authority by the terms of an investment services trust to direct, consent to or disapprove a transferor's actual or proposed investment decisions, distribution decisions or other decisions of the transferor;
- (6) "Investment decision" means the retention, purchase, sale, exchange, tender or other transaction affecting the ownership of or rights in investments;
- (7) "Investment services trust" means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:
 - (A) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;
 - (B) Is irrevocable; and
 - (C) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the property to the beneficiary;
- (8) "Person" has the meaning ascribed to it in § 1-3-105;
- (9) "Property" includes real property, personal property, and interests in real or personal property;

(10) "Qualified affidavit" means a sworn affidavit signed by the transferor before a disposition of assets to an investment services trust that meets the requirements of § 35-16-103. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of subdivisions (7)(B) and (C) and shall state facts as of the time of the original disposition;

(11) "Qualified disposition" means a disposition by or from a transferor with or without consideration, to an investment services trust after the transferor executes a qualified affidavit;

(12) "Qualified trustee" means a person who:

(A) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Tennessee department of financial institutions, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or any successor to them;

(B) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the investment services trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the investment services trust, or otherwise materially participates in the administration of the investment services trust; and

(C) Is not the transferor;

(13) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made; and

(14) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(A) As an owner of property;

(B) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(C) As a trustee.

HISTORY: Acts 2007, ch. 144, § 2; 2008, ch. 1010, § 1; 2010, ch. 725, § 13.

NOTES: Amendments.

The 2008 amendment added the definition of "spouse or former spouse".

The 2010 amendment rewrote the definition of "transferor" which read: " 'Transferor' means a person who, as an owner of property, is a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate, or as a trustee, directly or indirectly makes a disposition or causes a disposition to be made."

Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2008, ch. 1010, § 3. July 1, 2008.

Acts 2010, ch. 725, § 25. July 1, 2010.

Section to Section References.

This section is referred to in §§ 35-16-104, 35-16-106, 35-16-107, 35-16-108, 35-16-110.

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Tenn. Code Ann. § 35-16-103 (2012)

35-16-103. Qualified affidavit requirements.

A qualified affidavit shall state that:

- (1) The transferor has full right, title, and authority to transfer the assets to the trust;
- (2) The transfer of the assets to the trust will not render the transferor insolvent;
- (3) The transferor does not intend to defraud a creditor by transferring the assets to the trust;
- (4) The transferor does not have any pending or threatened court actions against the transferor, except for those court actions identified by the transferor on an attachment to the affidavit;
- (5) The transferor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;
- (6) The transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code; and
- (7) The assets being transferred to the trust were not derived from unlawful activities.

HISTORY: Acts 2007, ch. 144, § 3.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Section to Section References.

This section is referred to in § 35-16-102.

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Tenn. Code Ann. § 35-16-104 (2012)

35-16-104. Restrictions on actions, remedies and claims.

(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition to an investment services trust or for the avoidance of a qualified disposition to an investment services trust, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, compiled in title 66, chapter 3, part 3, and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud such creditor.

(b) A creditor's claim under subsection (a) shall be extinguished unless:

(1) The creditor's claim arose before the qualified disposition to an investment services trust was made, and the action is brought within the limitations of § 66-3-310 in effect on the date of the qualified disposition; or

(2) Notwithstanding § 66-3-310, the creditor's claim arose concurrent with or subsequent to the qualified disposition and the action is brought within four (4) years after the qualified disposition is made.

(c) For purposes of this chapter, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on or after July 1, 2007, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of § 35-16-102(7)(B) and (C).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition that are provided in this section and § 35-16-106, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, or an advisor of an investment services trust, or against any person involved in the counseling, drafting, preparation, execution or funding of an investment services trust. For purposes of this section, counseling, drafting, preparation, execution or funding of an investment services trust includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the investment services trust.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of an investment services trust, or against any person involved in the counseling, drafting, preparation, execution or funding of an investment services trust, if, as of the date such action is brought, an action by a creditor with respect to the investment services trust would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made by means of the same investment services trust, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against an investment services trust, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this chapter. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) An investment services trust shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in § 35-16-111 or serves as an investment advisor pursuant to § 35-16-109.

(i) (1) Notwithstanding any provisions of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and such creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment or order of a court for the payment of one (1) of the following:

(A) Past due child support;

(B) Past due alimony in solido of a spouse or former spouse;

(C) Past due alimony or support of a spouse or former spouse; or

(D) A written agreement, judgment or order of a court for division of marital property of a spouse or former spouse, but only to the extent of such debt, legally mandated interest and the reasonable cost of collection.

(2) (A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final non-appealable determination of a Tennessee court or a fully domesticated, final non-appealable order of a foreign court that such debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that such attempts would be futile.

(B) Nothing in this subdivision (i)(2) shall be construed to prohibit the court from making the findings required in subdivisions (i)(2)(A)(i) and (ii) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

HISTORY: Acts 2007, ch. 144, § 4; 2008, ch. 1010, § 2; 2010, ch. 725, §§ 14-16.

NOTES: Amendments.

The 2008 amendment added (i).

The 2010 amendment added ", and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud such creditor" to the end of (a); substituted "neither a creditor" for "neither the creditor" in the first sentence of (d); and added (j).

Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2008, ch. 1010, § 3. July 1, 2008.

Acts 2010, ch. 725, § 25. July 1, 2010.

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Tenn. Code Ann. § 35-16-105 (2012)

35-16-105. Powers and rights of transferor.

A transferor shall have only the powers and rights conferred by the investment services trust. The powers and rights conferred by the investment services trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust. Except as permitted by §§ 35-16-109 and 35-16-111, the transferor shall have no rights or authority with respect to the corpus of the investment services trust or the income from the trust, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

HISTORY: Acts 2007, ch. 144, § 5; 2010, ch. 725, § 17.

NOTES: Amendments.

The 2010 amendment added the second sentence.

Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2010, ch. 725, § 25. July 1, 2010.

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Tenn. Code Ann. § 35-16-106 (2012)

35-16-106. Avoidance of qualified dispositions.

(a) A qualified disposition to an investment services trust shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with costs, including attorneys' fees, that the court may allow.

(b) In the event any qualified disposition shall be avoided as provided in subsection (a), then:

(1) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(A) The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in the defense of the action or proceedings to avoid the qualified disposition;

(B) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and

(C) For purposes of this subdivision (b)(1), it shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and

(2) If the court is satisfied that a beneficiary of an investment services trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees of the investment services trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subdivision (b)(2), it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of § 35-16-102(7)(A).

(d) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.

HISTORY: Acts 2007, ch. 144, § 6.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Section to Section References.

This section is referred to in § *35-16-104*.

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Tenn. Code Ann. § 35-16-107 (2012)

35-16-107. Spendthrift provisions.

A spendthrift provision as described in § 35-16-102(7)(C) shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the *Bankruptcy Code*, codified in 11 U.S.C. § 541(c)(2), or any successor provision.

HISTORY: Acts 2007, ch. 144, § 7.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

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Tenn. Code Ann. § 35-16-108 (2012)

35-16-108. Qualified trustees and advisors.

(a) For purposes of this chapter, neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in § 35-16-102(12)(A) shall be considered a qualified trustee; however, nothing in this chapter shall preclude a transferor from appointing one (1) or more advisors, including, but not limited to:

(1) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors;

(2) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and

(3) Investment advisors, whether or not the advisors would meet the requirements imposed by § 35-16-102(12).

(b) For purposes of subsection (a), "advisor" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds one (1) or more trust powers.

HISTORY: Acts 2007, ch. 144, § 8.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Section to Section References.

This section is referred to in § 35-16-111.

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Tenn. Code Ann. § 35-16-109 (2012)

35-16-109. Transferor as investment advisor -- Retention of veto right.

A person may serve as an investment advisor notwithstanding that the person is the transferor of the qualified disposition.

HISTORY: Acts 2007, ch. 144, § 9; 2010, ch. 725, § 18.

NOTES: Amendments.

The 2010 amendment deleted ", but the person may not otherwise serve as advisor to a trust that is a qualified disposition except with respect to the retention of the veto right permitted by § 35-16-111(1)" from the end.

Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2010, ch. 725, § 25. July 1, 2010.

Section to Section References.

This section is referred to in §§ 35-16-104, 35-16-105.

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Tenn. Code Ann. § 35-16-110 (2012)

35-16-110. Successor trustees.

In the event that a qualified trustee of an investment services trust ceases to meet the requirements of § 35-16-102(12)(A), and there remains no trustee that meets the requirements, the qualified trustee shall be deemed to have resigned as of the time of that cessation, and thereupon the successor qualified trustee provided for in the investment services trust shall become a qualified trustee of the investment services trust, or in the absence of any successor qualified trustee provided for in the investment services trust, then a court of this state shall, upon application of any interested party, appoint a successor qualified trustee.

HISTORY: Acts 2007, ch. 144, § 10.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

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Tenn. Code Ann. § 35-16-111 (2012)

35-16-111. Revocability of trusts.

An investment services trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:

- (1) A transferor's power to veto a distribution from the trust;
- (2) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death;
- (3) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;
- (4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in § 664 of the *Internal Revenue Code of 1986*, codified in 26 U.S.C. § 664, and any successor provision;
- (5) The transferor's receipt each year of an amount specified in the trust, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined from time to time pursuant to the trust;
- (6) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:
 - (A) In the qualified trustee's or qualified trustees' discretion. For purposes of this section, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;
 - (B) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the *Internal Revenue Code of 1986*, codified in 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1), as in effect on July 1, 2007, or as later amended; or
 - (C) At the direction of an advisor described in § 35-16-108 who is acting:
 - (i) In the advisor's discretion; or
 - (ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of §

2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code of 1986, 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1), as in effect on July 1, 2007, or as later amended;

(7) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of § 672(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 672(c), and any successor provision;

(8) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in § 2702(c) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 2702(c), and any successor provision;

(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if such distribution would be the result of a qualified trustee's or qualified trustees' acting:

(A) In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or

(B) At the direction of an adviser described in § 35-16-108, who is acting in such adviser's discretion;

(10) The ability, whether pursuant to direction in the investment services trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(11) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subdivision (3), (6), (9), or (10) by direct payment to the taxing authorities.

HISTORY: Acts 2007, ch. 144, § 11; 2010, ch. 725, § 19.

NOTES: Amendments.

The 2010 amendment added (9)-(11).

Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2010, ch. 725, § 25. July 1, 2010

Section to Section References.

This section is referred to in §§ 35-16-104, 35-16-105.

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Tenn. Code Ann. § 35-16-112 (2012)

35-16-112. Applicability.

This chapter applies to qualified dispositions to investment services trusts and dispositions by transferors who are trustees made on or after July 1, 2007.

HISTORY: Acts 2007, ch. 144, § 12.

NOTES: Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

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Title 66 Property

Chapter 1 Estates in Property

Part 2 Tennessee Uniform Statutory Rule Against Perpetuities

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Tenn. Code Ann. § 66-1-201 (2012)

66-1-201. Short title.

This part shall be known and may be cited as the "Tennessee Uniform Statutory Rule Against Perpetuities."

HISTORY: Acts 1994, ch. 654, § 1.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.

Law Reviews.

Freeing Property Owners From the RAP Trap: Tennessee Adopts the Uniform Statutory Rule Against Perpetuities (Amy Morris Hess), 62 *Tenn. L. Rev.* 267 (1995).

Collateral References.

28 *Am. Jur. 2d Estates* § 384.

70 C.J.S. Perpetuities § 12 et seq.



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Tenn. Code Ann. § 66-1-202 (2012)

66-1-202. Validity of nonvested property interests and powers of appointment.

(a) A nonvested property interest is invalid unless one (1) of the following conditions is satisfied:

(1) When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive;

(2) The interest either vests or terminates within ninety (90) years after its creation; or

(3) The interest satisfies the conditions set forth in subsection (f).

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless one (1) of the following conditions is satisfied:

(1) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one (21) years after the death of an individual then alive;

(2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after its creation; or

(3) The condition precedent satisfies the conditions set forth in subsection (f).

(c) A non-general power of appointment or a general testamentary power of appointment is invalid unless one (1) of the following conditions is satisfied:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one (21) years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within ninety (90) years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

(1) The expiration of a period of time not exceeding twenty-one (21) years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(2) The expiration of a period of time that exceeds or might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;

such language is inoperative to the extent it produces a period of time that exceeds twenty-one (21) years after the death of the survivor of the specified lives.

(f) As to any trust created after June 30, 2007, or that becomes irrevocable after June 30, 2007, the terms of the trust shall require that all beneficial interests in the trust vest or terminate or the power of appointment is exercised within three hundred sixty (360) years.

HISTORY: Acts 1994, ch. 654, § 2; 2007, ch. 144, §§ 14-16; 2010, ch. 725, § 20.

NOTES: Amendments.

The 2007 amendment added (a)(3); added (b)(3); and added (f).

The 2010 amendment, in (f), deleted the proviso from the end of the first sentence which read: "; provided, however, that this subsection (f) shall only apply to trusts that grant a power of appointment at death to at least one (1) member of each generation of beneficiaries who are beneficiaries of the trust more than ninety (90) years after the creation of the interest", and deleted the former second sentence which read: "The permissible appointees of each power of appointment shall at least include all descendants of the beneficiary, yet may include other persons."

Effective Dates.

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2010, ch. 725, § 25. July 1, 2010.

Cross-References.

Construction of "dying without heirs", § 66-1-104.

Section to Section References.

This section is referred to in §§ 66-1-203, 66-1-204, 66-1-205.



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Tenn. Code Ann. § 66-1-203 (2012)

66-1-203. Creation of nonvested property interest or power of appointment.

(a) Except as provided in subsections (b) and (c) of this section and in § 66-1-206(a), the time of creation of a nonvested property interest or a power of appointment is determined by other applicable statutes or, if none, under general principles of property law.

(b) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(1) A nonvested property interest; or

(2) A property interest subject to a power of appointment described in §§ 66-1-202(b) or (c);

the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

HISTORY: Acts 1994, ch. 654, § 3.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.



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Tenn. Code Ann. § 66-1-204 (2012)

66-1-204. Judicial reformation of property disposition.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety (90) years allowed by §§ 66-1-202(a)(2), (b)(2) or (c)(2) if any of the following conditions is satisfied:

(1) A nonvested property interest or a power of appointment becomes invalid under the statutory rule against perpetuities provided in § 66-1-202;

(2) A class gift is not but might become invalid under the statutory rule against perpetuities provided in § 66-1-202, and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by § 66-1-202(a)(1) can vest but not within ninety (90) years after its creation.

HISTORY: Acts 1994, ch. 654, § 4.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.



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Tenn. Code Ann. § 66-1-205 (2012)

66-1-205. Exceptions to rule.

Section 66-1-202 does not apply to any of the following:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(A) A premarital or postmarital agreement;

(B) A separation or divorce settlement;

(C) A spouse's election;

(D) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(E) A contract to make or not to revoke a will or trust;

(F) A contract to exercise or not to exercise a power of appointment;

(G) A transfer in satisfaction of a duty of support; or

(H) A reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one (1) or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their bene-

ficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this state.

HISTORY: Acts 1994, ch. 654, § 5.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.



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Tenn. Code Ann. § 66-1-206 (2012)

66-1-206. Application -- Retroactivity.

(a) Except as provided in subsection (b), this part applies to nonvested property interests and unexercised powers of appointment regardless of whether they were created before, on, or after July 1, 1994. A property interest shall not be deemed vested merely because it would vest if the common law rule against perpetuities were violated.

(b) This part does not apply to any property interest or power of appointment the validity of which has been determined by a final judgment in a judicial proceeding or by a settlement among interested persons prior to July 1, 1994.

HISTORY: Acts 1994, ch. 654, § 6.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.

Section to Section References.

This section is referred to in § 66-1-203.



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Tenn. Code Ann. § 66-1-207 (2012)

66-1-207. Preemption of common law.

This part supersedes the common law rule against perpetuities in this state.

HISTORY: Acts 1994, ch. 654, § 7.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.



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Tenn. Code Ann. § 66-1-208 (2012)

66-1-208. Application and construction.

This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

HISTORY: Acts 1994, ch. 654, § 8.

NOTES: Cross-References.

Construction of "dying without heirs", § 66-1-104.